



c/o No 203.

Brief of Edmunds for Appellant

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Supreme Court of the United States.

Filed Jan. 16, 1897.

OCTOBER TERM, 1896. No. 203

The Interstate Commerce Commission,
Appellant,

vs.

The Alabama Midland Railway Company *et al.*

BRIEF BY MR. GEORGE F. EDMUNDS.



SUPREME COURT OF THE UNITED STATES.

The Interstate Commerce Commission, Appellant,

vs.

The Alabama Midland Railway Company et al.

October Term, 1896.

No. 563.

Brief by Mr. George F. Edmunds, on behalf of the appellant, on the question of the JURISDICTIONAL POWER of the Interstate Commerce Commission to make the order it did in this case, that the charge exacted by the carriers in respect of the particular goods in question should not exceed a certain named sum which the Commission, upon complaint, answers, issues, proofs, and hearing, found to be reasonable and just.

I. It is submitted with respectful confidence that *the interstate commerce law is in all its CIVIL aspects a REMEDIAL one.*

At the time of its passage the railway carriers were the absolute and irresponsible masters of all interstate commerce. The several States in trying to break up,

or at least to mitigate, the unjust tyranny of these great corporations and combinations that held the largest part of the intercourse of the people in their grasp (and which in many instances undertook to control political as well as commercial affairs), found themselves baffled, and practically defeated in their efforts by the national constitutional provision that only Congress could regulate interstate commerce. In this state of affairs, and to redress such enormous grievances, the Interstate Commerce Act was passed for the intended benefit of the whole body of the citizens of the Republic having a common grievance and a common interest in the vast commercial intercourse between all the States. This legislation was, therefore, in the very highest sense, and to the last degree, REMEDIAL.

II. Being thus remedial, the statute ought to be construed liberally to the attainment of the ends in view. Instead of being given the narrowest possible application and construction, it should, it is humbly submitted, be applied and construed by the judiciary in the largest latitude fairly consistent with its language. It ought not to be frittered away by the refinements of criticism, or made ineffectual because it does not possess all the inclusive and exclusive qualities of a plea in abatement, and may not be "certain to a certain intent in every particular." It is, perhaps, questionable taste for the Bar to cite authority

for this proposition, but it may be permitted to refer to a few of the vast number of the authorities on the subject. 2nd Pet., 627, *Wilkinson vs. Leland*; 7th Wall., 219, *Silver vs. Ladd*; 12th Pet., 102, *Beaston vs. Farmers' Bank*; 6th Pet., 29, *U. S. vs. Bank of North Carolina*; 18th Pet., 107, *Bank of U. S. vs. Lee*. Broom's Legal Maxims (fifth American edition from third London edition) [p. 80].

III. But the contention on the other side is that, while the Commission has power to decide what shall *not* be done, it has no power in the very same case to do complete justice by declaring what *shall be* done by the carriers in the given matter. We may well quote here the language of Broom's Legal Maxims: "Again, "in construing an Act of Parliament, it is a settled "rule of construction that cases out of the letter of "the statute, yet within the same mischief or cause of "the making, thereafter shall be within the remedy "thereby provided; and, accordingly, it is laid down "that for the sure and true interpretation of all statutes (be they penal or beneficial, restrictive or enlarging of the common law) four things must be "considered: (1st) What was the common law before "the making of the Act; (2d) What was the mischief "for which the common law did not provide; (3d) "What remedy has been appointed by the legislature "for such mischief; and (4th) The true reason of the "remedy. And then the duty of the judges is to put

"such a construction upon the statute as shall sup-
 "press the mischief and advance the remedy—to sup-
 "press the subtle inventions and evasions for continu-
 "ing the mischief *pro privato commodo*, and to add
 "force and life to the cure and remedy according
 "to the true intent of the makers of the Act, *pro bono*
 "*publico*. In expounding remedial laws, then, the
 "courts will extend the remedy so far as the words
 "will admit." It is submitted that the words of the
 statute in question do not require the application of
 the foregoing rules,—being too plain for their applica-
 tion. If they are not, then the rule should be applied.

IV. What, then, is the statute? At the risk of re-
 iteration, I quote the crucial parts of some of the sec-
 tions bearing on the subject of this brief:—

"SEC. 1. * * * All charges made for any
 "services rendered or to be rendered in the trans-
 "portation of passengers or property as aforesaid,
 "or in connection therewith, or for the receiving,
 "delivering, storage, or handling of such prop-
 "erty, *shall be reasonable and just*; and every un-
 "just and unreasonable charge for such service is
 "prohibited and declared to be unlawful."

"SEC. 2. That if any common carrier subject to
 "the provisions of this Act shall, directly or in-
 "directly, by any special rate, rebate, drawback,
 "or other device, charge, demand, collect, or re-

"ceive from any person or persons a greater or
 "less compensation for any service rendered or
 "to be rendered in the transportation of pas-
 "sengers or property, subject to the provisions
 "of this Act, than it charges, demands, collects, or
 "receives from any other person or persons for
 "doing for him or them a like and contempora-
 "neous service in the transportation of a like kind
 "of traffic, and under substantially similar circum-
 "stances and conditions, such common carrier
 "shall be deemed guilty of unjust discrimination,
 "which is hereby prohibited and declared to be
 "unlawful."

"SEC. 3. That it shall be unlawful for any com-
 "mon carrier subject to the provisions of this Act
 "to make or give any undue or unreasonable
 "preference or advantage to any particular per-
 "son, company, firm, corporation, or locality, or
 "any particular description of traffic, in any re-
 "spect whatsoever, or to subject any particular
 "person, company, firm, corporation, or locality,
 "or any particular description of traffic to any
 "undue or unreasonable prejudice or disadvan-
 "tage in any respect whatsoever."

"SEC. 4. That it shall be unlawful for any com-
 "mon carrier subject to the provisions of this Act
 "to charge or receive any greater compensation
 "in the aggregate for the transportation of pas-
 "sengers or of like kind of property under sub-
 "stantially similar circumstances and conditions
 "for a shorter than a longer distance over the
 "same line in the same direction," &c.

SECS. 6 and 7 control the regulation of through rates, and provide against devices to break up continuous transportation, and for a general control of the Commission over that subject.

SEC. 9 provides that persons claiming to be damaged in respect of the matters embraced in the Acts may complain to the Commission.

SEC. 11 establishes the Commission, and secures to it a non-partisan character and a freedom from private interest or bias.

SEC. 12 (as amended): "That the Commission
 "hereby created shall have authority to inquire
 "into the management of the business of all com-
 "mon carriers subject the provisions of this Act,
 "and shall keep itself informed as to the manner
 "and method in which the same is conducted;
 "and shall have the right to obtain from such
 "common carriers full and complete information
 "necessary to enable the Commission to perform
 "the duties and carry out the objects for which it
 "was created; and THE COMMISSION IS HEREBY
 "AUTHORIZED AND REQUIRED TO EXECUTE AND EN-
 "FORCE THE PROVISIONS OF THIS ACT;" * * *
 "and for the purposes of this Act the Commis-
 "sion shall have power to require by subpoena
 "the attendance and testimony of witnesses, and
 "the production of all books, papers, tariffs, con-
 "tracts, agreements, and documents relating to
 "any matter under investigation," * * *

SEC. 13. "That any person, firm, corporation,
 "or association, or any mercantile, agricultural,

"or manufacturing society, or any body politic or
 "municipal organization complaining of *anything*
 "*done or omitted to be done* by any common carrier
 "subject to the provisions of this Act in contra-
 "vention to the provisions thereof, may apply to
 "said Commission by petition, which shall briefly
 "state the facts; whereupon a statement of the
 "charges thus made shall be forwarded by the
 "Commission to such common carrier, who shall
 "be called upon to *satisfy* the complaint, or to
 "answer the same in writing within a reasonable
 "time, to be specified by the Commission. If
 "such common carrier, within the time specified,
 "shall make *reparation* for the injury alleged
 "to have been done, said carrier shall be relieved
 "of liability to the complainant only for the
 "particular violation of law thus complained of.
 "If such carrier shall not satisfy the complaint
 "within the time specified, or there shall appear
 "to be any reasonable ground for investigating
 "said complaint, it shall be the duty of the Com-
 "mission to investigate the matters complained
 "of in such manner and by such means as it shall
 "deem proper." * * *

SEC. 14. "That whenever an investigation shall
 "be made by said Commission, it shall be its duty
 "to make a report in writing in respect thereto,
 "which shall include the findings of fact upon
 "which the conclusions of the Commission are
 "based, together with its recommendation as to
 "what *reparation*, if any, should be made by the
 "common carrier to any party or parties who
 "may be found to have been injured; and such

“findings so made shall thereafter, in all judicial
 “proceedings, be deemed *prima facie* evidence as
 “to each and every fact found.” * * *

SEC. 15. “That if in any case in which an in-
 “vestigation shall be made by said Commission it
 “shall be made to appear to the satisfaction of the
 “Commission, either by the testimony of wit-
 “nesses or other evidence, that anything has been
 “*done* or *omitted to be done* in violation of the pro-
 “visions of this Act, or of any law cognizable by
 “said Commission, by any common carrier, or
 “that any injury or damage has been sustained
 “by the party or parties complaining, or by other
 “parties aggrieved in consequence of any such
 “violation, it shall be the duty of the Commission
 “to forthwith cause a copy of its report in respect
 “thereto to be delivered to such common carrier,
 “together with a notice to said common carrier to
 “*cease and desist from such violation*, or to make
 “*reparation* for the injury so found to have been
 “done, or *both*.” * * *

SEC. 16. “That whenever any common carrier
 “as defined in and subject to the provisions of this
 “Act, shall violate, or refuse or neglect to obey or
 “perform any lawful order or requirement of the
 “Commission created by this Act,” * * * “it
 “shall be lawful for the Commission, or for any
 “company or person interested in such order or
 “requirement, to apply in a summary way, by peti-
 “tion to the Circuit Court of the United States,
 “*sitting in equity*,” * * * “alleging such *vio-*
 “*lation* or *disobedience*, as the case may be; and

"the court shall have power to hear and deter-
 mine the matter, on such short notice to the
 common carrier complained of as the court shall
 deem reasonable ;" * * * "and said court
 shall proceed to hear and determine the *matter*
 "speedily as a *court of equity*" * * * "*in*
 "*such manner as to do justice in the premises ;*
 "and to this end such court shall have power, if
 "it think fit, to direct and prosecute in such mode,
 "and by such persons as it may appoint, all
 "such inquiries as the court may think needful
 "to enable it to form a *just judgment* in the
 "*matter* of such petition." * * *

These sections, by general, comprehensive and specific language (only short, possibly, of the inclusive and exclusive strictness and fullness required in pleas in abatement at common law), place within the jurisdictional power and duty of the Interstate Commerce Commission the investigation, hearing, and determination of *all questions* of dispute between the public and its component citizens and localities and the carriers. There is no limitation of the clear phrases of these various sections. The duty of the carrier is set forth in *all its aspects*, both of *affirmative duty* and of *prohibition*. The first section requires that "*all charges shall be reasonable and just.*" The second section prohibits special personal favoritism by secret devices. The third section prohibits preferences between persons or localities and kinds of traffic. The fourth section prohibits charging more

for a shorter than for a longer distance. The twelfth section provides that the Commission shall have authority to "inquire into the management of the "business of all common carriers," and that "the "Commission is hereby authorized and required to execute and enforce the provisions of this Act." There is no part of it that the statute does not *expressly* require the Commission to cause to be *completely* executed. The method of this execution is pointed out by the prescribed modes of procedure provided for in sections 13, 14, 15, and 16. And all this to be done on due application, under due procedure of notice, evidence, and hearing of all the parties. How, then, can it be said by the most hypercritical refiner that the Commission has no jurisdiction to decide, for instance, what *is* "reasonable and just" as provided in section 1? Has the Commission only the power to repeat the words of the statute, and say to the carrier proved to be guilty of extortion, "You must desist from extortion, and be reasonable and just?" Would not that be a palpable mockery of either administrative or judicial justice?

If the statute had contained only the first and twelfth sections with the procedure sections, could this court doubt the *power* of the Commission to decide the matter, and require the very conduct on the part of the carrier that the Commission had found to be "reasonable and just"? To hold otherwise would be to ignore and flout the plainest possible use of

language, if the statute be within the competence of Congress to pass.

But the rightful power of Congress to enact the law is not disputed. That the legislative department of any Government, State or national, has power to regulate the conduct of any full or *quasi* public business, is too obvious for discussion. State legislatures, in respect of their internal commerce and polity, possess, and have always exercised, the power of controlling all such business through agents (by whatever names they may be called), to whom is deputed the execution of the sovereign will according to the principles and rules laid down by the legislative power. The innumerable instances of this need not be cited. Indeed, government could not be, and it never has been, carried on in any other way.

Again: section 2 prohibits the unjust discrimination between persons, *i. e.*, between the traffic that citizens may be engaged in, or between citizens engaged in the same traffic. The Commission is, by the proper methods of procedure, to "*enforce*" this provision. Is the power of the Commission exhausted in saying to the discriminating carrier, "You shall not discriminate," and stop there? Must it not say, if it does its duty in enforcing the Act and redressing the grievances found to exist, that it will enforce the law by deciding what the *nature and degree* of the discrimination is, and by requiring that such degree of discrimination shall be effaced altogether by affirmative conduct of

equality, or by a charge of no more than the ascertained rightful sum, to the parties aggrieved?

Without referring in detail to the other provisions of the statute above quoted, it is safe to say that the plain purpose and clear, comprehensive language of the Act, show that the *whole* and *all* of the duties and obligations of the carrier to its customers and toward localities, &c., are to be enforced by the Commission; not a part of them, not a half of any of them, but all and every part of all of them. It is like algebra, in which neither side of the equation can possibly be considered or worked without the other. A complaint may be filed before the Commission (as in this case) alleging that the carrier ought not to charge for a described service more than the just and reasonable sum of fifty cents the hundred pounds, while, in fact, it is exacting one dollar the hundred pounds. Suppose the carrier appears and confesses that fifty cents per hundred is a reasonable and just price and that it does exact one dollar, but insists that the Commission has no jurisdiction to require the confessed reasonable charge to be made, and that it only has jurisdiction to require the cessation of the one dollar exaction, thus leaving the carrier to continue to plunder its customers of forty-nine cents per hundred with absolute impunity, as far as the Commission is concerned, until a new complaint shall have been instituted and the forty-nine cent charge again declared to be unreasonable. That this is shocking to all our *natural* sense of justice no one can dispute. Why, then, should the broad,

comprehensive, and specific language of the statute be "cabined, cribbed, confined" to produce such a state of the law? The citation from *Broom* may be well remembered in this connection.

The statute certainly requires the carrier to *refrain from exacting more than a reasonable price* (section 1); to refrain from drawbacks, rebates, &c., and all other unjust discriminations (section 2); to refrain from giving preferences or unequal advantages to persons or localities (section 3); to refrain from exacting more for a short than for a long haul (section 4); to refrain from all devices to break up continuous passage from road to road (section 7). I repeat in this connection that section 12 provides that the Commission shall have authority to "inquire into the management of the business," &c., and to obtain "full and complete information necessary to perform the duties and carry out the objects for which it was created." And I repeat the inquiry, what were the duties and objects for which it was created? The same section answers the question in terms so clear that neither cavil nor sophistry can confuse or obscure them.

V. But it is said that the Commission is not a judicial body, and cannot exercise *judicial powers*. Granted; in the strict sense of the terms; but, in every civilized country, administrative officers have always lawfully exercised many powers in every department of government which are in their nature judicial; for every

power which involves the exercise of judgment, opinion, and decision is of that nature. Such are the powers exercised by the Secretary of the Interior as to many land questions; the Secretary of the Treasury and some of his subordinates, as to customs, &c.; the various Commissions that have existed from time to time for nearly a century to settle land claims; and many others.

That Congress had the power to establish interstate "rates" in the largest sense of the word cannot be doubted. And that it had the power to establish a Commission to do the same thing is, it is submitted, equally clear. It is assumed, for the purpose of this case, that it did neither in the sense to which I am now referring. It adopted a policy short of this, and provided clear descriptions and requirements concerning the duties of the carriers in *all the aspects* that touch their conduct toward their patrons and toward the localities and sections of the country; and established the Commission to execute and enforce *all these provisions*—not a part of them, and not a part of any one of them; not negatively merely, but affirmatively and fully, to the end that *real conformity* by the carrier to the requirements of the Act should be obtained, and as the Act declares, obtained speedily, by procedure formal and ceremonious, in which all parties in interest were to be heard; and it provided for a decision of the particular question and the particular grievance thus brought to the attention of the Commission and examined by it; and in case of refusal to obey, the Act

provided for a suit to be brought in a judicial court of "equity," which court is required "to hear and determine "the *matter speedily as a court of equity*," with all that the phrase implies. The Commission is to inquire into "*anything done or omitted to be done*" by any common carrier subject to the provisions of the Act in contravention to the provisions thereof; and it authorized the Commission to require the carrier to "satisfy the complaint," or answer; and then, after hearing, to require the carrier "to cease and desist from such *violation*, or "to make *reparation*, or *both*." How can this be done short of a decision upon the *whole* matter? To again illustrate, let it be supposed that the sole complaint was that the carrier was exacting double what was just and reasonable for a particular service, and that this, on due notice to both sides, was found to be true. This would be a palpable violation of the Act. But the Commission is authorized to require the carrier to cease and desist from doing that very wrong. Does the carrier do so unless and until he reduces his exaction to the true point of justice and reason? To hold otherwise it would be, it is submitted, trifling both with grammar and common justice. If the statute had conferred the very same power, and in the very same words, upon a court of equity instead of the Commission, could the power of the court to redress the whole grievance be doubted? But the admitted power of the Commission to command the desistance from a charge of one hundred cents per hundred pounds is no less "judicial" than a requirement not to charge

more than the sum found to be reasonable and just. And the two things are precisely the same in principle and legal effect, and are inseparable.

On the subject of "*reparation*" provided for in section 3, I observe again that this section is to be enforced by the Commission. How is this *possibly* to be done, otherwise than by commanding *action* by the carriers suited to the nature of the case, so as to obliterate the whole undue preference, &c., and how possibly otherwise can reparation be made to a locality? Reparation means "restoration" of the right. No *such* exercise of the power by the Commission is either "fixing rates" or prejudging a matter, as referred to by Mr. Justice Shiras in the Social Circle case.

VI. The words "lawful order" mean an order the Commission has *jurisdiction* to make. An order may be lawful and at the same time erroneous, so that if the Commission made an order in a matter over which they had jurisdiction, which was merely an error of judgment as to precisely the degree of reparation, for instance, the carrier ought to make, the order would still be lawful. In such a case the court is to "hear" and determine the *matter*," that is, the whole subject, "as a court of equity, * * * in such manner as to "do *justice* in the *premises*;" that is, complete justice in the whole premises. "Premises" is not merely the particular order that the Commission has made, but

it is the whole subject that had been duly brought before the Commission and on due notice and hearing had been acted upon. It is that duty which rested with the Circuit Court and is now imposed upon this court.

All the preceding action described is not "fixing" rates in the sense that State commissioners of railways are authorized by their legislatures to establish general rates for all classes and for all railways, as is contended for by the defendants. We make no such claim. The action of the Commission, and the action of this court, on what is really an appeal from and a review of its judgment, is the trial and determination of a particular case, and determining for that particular case what the conduct of the carrier shall be in respect of the particular dispute involved in it. It is the exertion of no general power to prejudge or to fix rates, nor is it the exertion of any power to fix rates in general. If this distinction be observed, there is no difficulty whatever. This is precisely in accord with what Mr. Justice Shiras said. After stating what had happened before the Commission and stating that in the Circuit Court evidence was introduced which had not been laid before the Commission, showing that the rate to Birmingham had been forced down by the coming in of a new competitive road, and that the Circuit Court had thereupon found that the evidence was sufficient to overcome the findings of the Commission, and that the rate complained of was not unreasonable; and after stating that the Circuit Court of Appeals had

adopted the views of the Circuit Court in respect of the reasonableness of the rate from Cincinnati to Atlanta, and "as both courts found the existing rate to " have been reasonable, we do not feel disposed to re-
 " view their finding on the matter of fact," he then condemned the conduct of the carriers in lying by. He then says, "Whether Congress intended to confer
 " upon the Interstate Commerce Commission the
 " power to itself fix rates was mooted in the courts be-
 " low and is discussed in the briefs of counsel." He says, "We do not find any provision in the Act which
 " expressly or by necessary implication confers such
 " power," and so forth. He then says, "The reason-
 " ableness of the rate in a *given case depends on facts,*
 " *and the function of the Commission is to consider these*
 " *facts and give them the proper weight.* If the Com-
 " mission, *instead* of withholding judgment in such a
 " matter *until an issue shall be made and the facts found,*
 " itself fix a rate, *that* rate is prejudged by the Com-
 " mission to be reasonable." In this proposition we
 entirely concur; but in this case the identical question
was raised by the petitions, an issue *was made*, evi-
 dence *was taken* on both sides, and the *facts found*, so
 that the sum fixed as reasonable by the Commission
was not prejudged. And he adds that "Subject to the
 " two leading prohibitions that their charges shall not be
 " unjust and unreasonable, and that they shall not un-
 " justly discriminate so as to give undue preference or
 " advantage, or subject to undue prejudice or disadvan-
 " tage persons or traffic similarly circumstanced, the

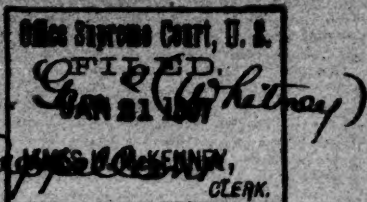
" Act to Regulate Commerce leaves common carriers " as they were at common law." Here again it will be seen that reasonableness and unreasonableness, justice and injustice, preference, advantage, prejudice, disadvantage are the very subjects that he says are within the competence of the Commission to determine. If the Supreme Court had been of opinion that the action of the Commission in its decision in regard to the Atlanta rate was beyond its jurisdictional power, they would have so said, and affirmed the judgment on that ground ; but in distinct terms they affirm the judgment of the Circuit Court and the Court of Appeals upon the express ground that the Commission was in error in its finding of fact.

VII. The judiciary of the United States have recently been able, without the special aid of any Act of Congress, to preserve the interstate carriers from being despoiled by unlawful interference with their operations. It is to be hoped for the good name of Congress and for the public welfare and contentment that the same judiciary will find that Congress has adequately provided for protecting the people from being despoiled by the carriers, and that it is within the clear competence of the Commission and the courts to make these provisions effectual.

GEO. F. EDMUNDS.

1st Div. 203.

Reply Br. of City
for Appellant



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OCTOBER TERM, 1896.

THE INTERSTATE COMMERCE COMMISSION,
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v.

THE ALABAMA MIDLAND RAILWAY Com-
pany, The Central Railroad and Banking
Company of Georgia, et al.

No. 563.

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

REPLY BRIEF FOR APPELLANT.
